

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

75-2034

B

~~NO. 74-8429~~

P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RICARDO BORROTO,

Petitioner-Appellant

vs.

WARDEN, FED. HOUSE OF DETENTION, ET AL,

Respondents-Appellees.

On Appeal from the United States District Court
For the Southern District of New York

APPELLANT'S BRIEF AND APPENDIX

Gerardo Sanchez
Next-Friend Applicant for
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and on his behalf.
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UNITED STATES COURT OF APPEALS
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RICARDO BORROTO

Petitioner-Appellant

vs.

WARDEN, FED. HOUSE OF DETENTION, FT AL

Respondents-Appellees.

PRELIMINARY STATEMENT

This is an appeal from an Order by the H. Inzer B. Wyatt of the United States District Court for the Southern District of New York, rendered December 13, 1974, denying an application for an Order against the Warden of the Federal House of Detention, compelling him to do his duty by not barring appellant Borroto's interpreter-law assistant from the Detention Center, interfering therefore with Borroto's right of access to the courts and right to obtain legal assistance to facilitate such access.

STATEMENT OF FACTS

The appellant, Ricardo Borroto, is incarcerated and in the custody of the Warden of the Federal House of Detention, 427 West Street, New York, N.Y. 10014, within the Southern District of New York, serving the last 5 months of a 9 years sentence.

He has a few legal actions pending in various U.S. District Courts. Some of them are on appeal, in different U.S. Circuit Courts of Appeals. He does not speak English fluently, is not entitled to a lawyer, and has been assisted by an interpreter-friend and law assistant in all his petitions and communications with the Courts.

The Warden of the Federal House of Detention has no objections to the visits and assistance of the interpreter to Borroto, but barred such assistance at the request of Silvio Mollo, an Assistant U.S. Attorney.

Appellant filed a Petition with Judge Wyatt, challenging the action of the Warden by Order of the U.S. Attorney, his adversary, under our System of Criminal Justice, denying him his right of access to the courts and his right to obtain legal assistance to facilitate such access. The Court issued a Show Cause Order, yet no answering papers of any kind were served by any respondent. At the hearing, respondents made no motions against the relief sought by Petitioner-Appellant. It was solely Judge Wyatt, sua sponte, who made his own motion to deny the Mandamus relief sought.

POINT I

THE DISTRICT JUDGE A QUO SOLELY DETERMINED THE PROCEEDING AGAINST PETITIONER BORROTO ON THE SINGLE BASIS THAT HE HAD NO SUBJECT MATTER JURISDICTION TO GRANT ANY RELIEF ENJOINING AN UNFAIR VISITOR'S ADMISSION DECISION.

The minutes of the very, very brief oral hearing before Hon. Judge Wyatt show that as a ground for denial of relief he claimed:

"What you are trying to do is to get the Court to substitute my administrative powers, which are very limited, in place of those of the Warden."
(MINUTES, page 2, lines 19-22)

The exclusion of a paraprofessional aid to a prisoner raises a constitutional question, which indeed, is triable in the District Court as relief is duly sought. In Procurier v. Martinez 416 US 396, the Supreme Court specifically held that a prisoner's rights were unconstitutionally abridge by a state prison administrative rule which entirely proscribed inmate access to paraprofessionals. And that prison rules affecting this right must pass the basic due process test of reasonability.

The Court of Appeals for the First Circuit dealt with a similar situation in Souza v. Travisono 498 F2d. 1120 (1974) affirming a lower court decision, Souza v. Travisono 368 F. Supp. 959 (1973) which reviewed and declared unconstitutional a prison regulation limiting access of paralegals to inmates.

It is clear that Judge Wyatt's assumption (that the actions

of the Warden could not in any manner be subject to his review) is wrong. In Novak v. Beto, 453 F2d. 661, the Court held that a district court is under an obligation to test a state's effort to meet the standards set down in Johnson v. Avery (393 US 483), to determine if they insure effective access to the courts. See also Cross v. Powers 328 F. Supp. 899. Gomes v. Travisono 353 F. Supp. 457.

POINT II

THE SOLE PROOF IN THE RECORD, BY PETITIONER, AS CORROBORATED BY THE PAPERS SUBMITTED BY THE U.S. ATTORNEY TO THIS H. COURT OF APPEALS, TEND ONLY TO SHOW THAT THE WARDEN-RESPONDENT MERELY EXCLUDED THE INTERPRETER-ASSISTANT AT THE REQUEST OF THE AUSA, AND NOT BECAUSE OF ANY OFFICIAL POLICY, REGULATION, DISCIPLINE OR EVEN PRISON SECURITY.

The US Attorney did not refute the fact that the action of the Warden was remote-controlled from his office. They did not serve any papers in response to the Order to Show Cause. In a memorandum of law submitted to this H. Court of Appeals, and not as part of the record with the lower court, citing Souza v. Travisono supra, n. 6 at page 1123, he purports that decision allows para-professional aid only where the prisoner is well-fixed enough to hire an attorney, and that the cases do not relate to the poor - prisoner like Petitioner-Appellant, without any full licensed - attorney aid. And that is not so. The crucial constitutional

principle at play in determining the necessity of paralegal access is the more fundamental right of access to the courts, (See Ex Parte Hull, 312 US 546) and the corollary right to obtain legal assistance to facilitate such access. See Johnson v. Avery, supra; Nolan v. Scafati, 430 F2d. 548. Petitioner-Appellant is not entitled to a lawyer and if he is not assisted by his interpreter friend and law assistant, his access to the courts is null, since he has no other alternative. The issue is really a new one. And it is important to note that of all the cases litigated in the Courts, none of them involved this situation: that the Warden who traditionally offers as justification "prison security" or "discipline", in this instance, does not objects.

Even in cases of discipline or security the Courts have stated (Via v. Cliff, 470 F2d. 274), that: "...the authority of prison officials to regulate the exercise of the right should not be employed to wrongfully interfere with the exercise of the right." And such regulations, must pass the basic due process test of reasonability, with the test being more or less stringent according to the character of the right taken from the prisoner. Gilmore v. Lynch, 319 F. Supp. at 109, n. 6.

CONCLUSION

For the reasons stated above, the decision of the District Court should be reversed.

Respectfully submitted,
Gerardo Sanchez
o/b/o Ricardo Borroto

APPENDIX

- A. Minutes of hearing in the Southern District of New York,
before Judge I. Wyatt, on December 13, 1974.
- B. Copy of Judge Wyatt's endorsement denying the application.
- C. Copy of Docket Card.

2 THE COURT: Mr. Clerk, suppose we take the
3 matter of Borroto.

4 There is an order to show cause for a writ of
5 habeas corpus which I signed.

6 What is your name?

7 MR. BORROTO: Ricardo Borroto.

8 THE COURT: You are Mr. Borroto; all right.

9 You have no counsel?

10 MR. BORROTO: No.

11 THE COURT: Mr. Borroto, if I understand you,
12 you simply come in here and I understand you are not trained
13 as a lawyer but you ask me to have the government show cause
14 why you shouldn't have a writ of habeas corpus, and the
15 ground is that in some way the Warden of West Street is
16 interfering with access by visitors to you. I cannot
17 grant the writ of habeas corpus for any such reasons.

18 Habeas corpus is to obtain release from confinement.
19 There are no grounds for releasing you.

20 What you are trying to do is to get the Court
21 to substitute my administrative powers, which are very
22 limited, in place of those of the warden.

23 Now, I asked the marshal to bring you over today
24 to give you a chance to tell me what you want to do, and
25 then my inclination is to feel that I must deny this

2 No, no, I understand Spanish fairly well but
3 we can't deal in Spanish here. You have to address me in
4 English.

5 THE INTERPRETER: He wants me to translate for
6 him, your Honor.

7 THE COURT: What is your name?

8 THE INTERPRETER: Girard Sanchez.

9 THE COURT: Is Mr. Sanchez an interpreter?

10 THE INTERPRETER: I am his interpreter.

11 THE COURT: Can you speak English, Mr. Borroto?

12 MR. BORROTO: No.

13 THE COURT: Is there any reason why Mr. Sanchez
14 shouldn't interpreter? Allright, go ahead.

15 But be very brief because I have a long calendar
16 and I have told you what is on my mind.

17 (Through the interpreter:)

18 MR. BORROTO: Your Honor, this is not only a
19 petition for habeas corpus but also and/or mandamus.
20 I have only five days to file a brief before the Court of
21 Appeals for the Fifth Circuit in New Orleans, and I don't
22 have the right to an attorney, and I need somebody to
23 translate my brief and present it in the court and do the
24 proper investigation since I don't have access to law books
25 at West Street.

1 dhbr

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2 THE COURT: All right. I suggest you make
3 an application to the Court of Appeals for the Fifth
4 Circuit. This application is denied.

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RICARDO MURROU

Attitioner

US ATTORNEY AND/OR WARDEN
FED. HOUSE OF DETENTION
Respondent

ORDER TO SHOW CAUSE AND TEMPORARY
RESTRANING ORDER

Office of the Clerk, U.S. District Court, Sacramento

MICROFILM



After hearing the
Court of
Appeals
D. C. Circuit
on Sept. 15, 1970

CIVIL DOCKET
UNITED STATES DISTRICT COURT

74 CIV. 5-300

Jury demand date:

JUDGE WYATT

C. Form No. 106 Rev.

| TITLE OF CASE | | ATTORNEYS | | | |
|---|--------------|---|---------------------|------|-------|
| RICARDO BORROTO VS U.S. ATTORNEY AND/OR WARDEN FEDERAL HOUSE OF DETENTION | | For plaintiff: Ricardo Borroto (Pro se) 427 West St. N.Y. 10014 CH 3-5300 | | | |
| | | For defendant: | | | |
| STATISTICAL RECORD | COSTS | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
| S. 5 mailed | Clerk | 1/14/74 | 3 Sonite | ✓ | 5 |
| S. 6 mailed ✓ | Marshal | 1/14/74 | Neatly | ✓ | 5 |
| Basis of Action: Petition for Writ of Habeas Corpus | Docket fee | | | | |
| Action arose at: | Witness fees | | | | |
| | Depositions | | | | |

Ricardo Borroto vs U.S. Attorney et al

74 Civil 5409

| DATE | PROCEEDINGS | Date Order or Judgment Note |
|------------|---|--------------------------------|
| Dec 11-74 | Filed Petition For Writ of Habeas Corpus | |
| Dec 12, 74 | Filed Order to Show Cause for a Writ of Habeas Corpus. ret. 12/13/74 Wyatt J. | |
| Dec. 16.74 | Filed Memo. End. on Order to Show Cause dtd. 12/12/74. After hearing in open court, this application is denied. So Ordered Wyatt J. | |
| Dec 16.74 | Filed Petitioner's Notice of Appeal. (mailed copies.) | |
| Jan 14.75 | XXXX Certified Record to the U.S.C.A. | |
| Feb 7.75 | Filed Transcript of proceeding dtd. 12/13/74. | |

RB

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By


Deputy Clerk